BEFORE THE APPEALS BOARD FOR THE KANSAS DIVISION OF WORKERS COMPENSATION

W. PAUL ADAMS	}
Claimant VS.	Docket No. 102 597
GILBERT CENTRAL CORPORATION	Docket No. 193,587
Respondent AND	
HARTFORD ACCIDENT & INDEMNITY Insurance Carrier	}

ORDER

Claimant appeals from a June 20, 1995 Preliminary Hearing Order of Administrative Law Judge Floyd V. Palmer which denied claimant's request for medical treatment.

ISSUES

On appeal, claimant contends the Administrative Law Judge exceeded his jurisdiction in denying benefits because the evidence establishes that claimant is in need of medical treatment as a result of an accidental injury to his neck which arose out of and in the course of his employment with the respondent. The sole issue before the Appeals Board is whether claimant has met his burden of proving that he sustained personal injury by accident arising out of and in the course of his employment with respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record and considering the briefs of the parties, the Appeals Board finds, for preliminary hearing purposes, as follows:

The finding by the Administrative Law Judge that claimant has not carried his burden of proving that he met with personal injury by accident arising out of and in the course of his employment with respondent should be affirmed. This issue turns primarily upon the credibility and believability of the claimant. The Administrative Law Judge had an opportunity to observe the in-person testimony of the claimant. He determined that the claimant's credibility had been impeached and more probably than not his chronic neck problems were not caused or aggravated by his work for respondent.

The Administrative Law Judge in this case had the opportunity to judge the claimant's demeanor and credibility while he was testifying at the Preliminary Hearing. The evidentiary record is conflicting as to whether claimant sustained an accident at work, when that accident is alleged to have occurred and whether the claimant's chronic degenerative neck condition was aggravated or made worse by his work with respondent. Where the evidentiary record is conflicting, the Appeals Board takes into consideration the Administrative Law Judge's opportunity to observe claimant's testimony and will give deference to his conclusions in that regard. Based upon the Appeals Board's review of the

record as a whole, including the in-person and affidavit testimony of the lay witnesses and the medical records and reports in evidence, we find that the Order by the Administrative Law Judge should be affirmed.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the June 20, 1995 Order of Administrative Law Judge Floyd V. Palmer should be, and the same is hereby, affirmed.

IT IS SO ORDERED.
Dated this day of October 1995.
BOARD MEMBER
BOARD MEMBER
BOARD MEMBER

c: Diane F. Barger, Emporia, Ks Steven C. Alberg, Overland Park, KS Floyd V. Palmer, Administrative Law Judge Philip S. Harness, Director